Supreme Court, U.S.
FILED

No. 09-374 SEP 21 2009

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In The

SUPREME COURT OF THE UNITED STATES

PETER HOFFMAN
Petitioner,

Vs.

UNITED AIRLINES
Respondent,

On Petition for Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the lower courts reasoning that Petitioner's conduct in the Bankruptcy Court was not "excusable neglect" under Bankruptcy Rule 9006 or Bankruptcy Rule 9024 directly conflicts with this Court's holding in Pioneer Investment Service Co. v. Brunswick Assoc. Ltd. Partnership.

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The order of the Seventh Circuit denying rehearing, filed April 29, 2009 is reprinted in the Appendix p. A8.

The opinion of the United States District Court for the Northern District of Illinois denying petitioner's appeal of the decision of the United States Bankruptcy Court, dated September 11, 2008, is reprinted in the Appendix pp. A9-A14.

Transcript of hearing on November 6, 2007 in the United States Bankruptcy Court for the Northern District of Illinois is reprinted in the Appendix pp. A15-A19.

The decision of the United States Bankruptcy Court for the Northern District of Illinois, denying petitioner's motion to file appeal late, dated September 11, 2007, is reprinted in the Appendix p. A20.

Transcript from the United States Bankruptcy Court for the Northern District of Illinois dismissing petitioner's Bankruptcy Claim against United Airlines, read into the record on June 28, 2007 and Order of same date, is reprinted in the Appendix pp. A21-A26.

JURISDICTION

On October 21, 1999, Petitioner brought suit in New York State Court against United Airlines for breach of contract. Respondent then removed the case to the United States District Court for the Southern District of New

York. Petitioner's case against United was pending in District Court when United filed for Bankruptcy on December 9, 2002.

Petitioner's case was transferred to the United States Bankruptcy Court for the Northern District of Illinois on February 6, 2003. Respondent then filed a Motion to Dismiss the Petitioner's Bankruptcy Claim in an omnibus motion, which was allowed by Judge Wedoff via a decision read into the record on June 28, 2007.

Petitioner then filed a Motion for Extension of Time to Appeal, which was denied by Judge Hollis on September 11, 2007. Petition then filed a Motion for Reconsideration on September 18, 2007, which was denied by Judge Darrah on November 7, 2007.

Petitioner appealed these decisions to the United States District Court for the Northern District of Illinois. On September 11, 2008, the District Court denied Petitioner's appeal.

Petitioner then appealed this decision to the United States District Court for the Seventh Circuit, which denied the Petitioner's appeal on March 31, 2009. Petitioner's petition for rehearing was denied on April 29, 2009. The Court granted Petitioner (pro se) Motion to File Certiorari Late on July 23, 2009.

Jurisdiction to review the Judgment of the Seventh Circuit is invoked by Bankruptcy Rule 60 and 9006 and Fed.R.App.P. 6.

STATUTES AND RULES AT ISSUE

Bankruptcy Rule 9006(b)(1): Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Bankruptcy Rule 9024: Rule 60 F.R.Civ.P. applies in cases under the Code except that (1)

a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(c), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by § 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by §1144, § 1230, or § 1330.

Federal Rules of Civil Procedure 60(b): On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable

diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

STATEMENT OF THE CASE

A. Facts Giving Rise to this Case

Petitioner was hired as a Station Operations Representative at United Airlines on June 15, 1992 with the understanding that Petitioner was to be transferred to the Pilot Corps. Just before the six-month probationary period was to expire, Petitioner was informed that he would be asked to remain for an additional period of time in a probationary status. Petitioner declined. In lieu of any further disagreement, Bob Caferio (Management and Petioner's supervisor) and Petitioner agreed that he would complete the necessary paperwork to transfer Petitioner to the Pilot Corps.

Mr. Caferio then initiated, completed and submitted a transfer request to the Pilot

Corps. The request apparently sat in process for some time until Petitioner inquired about the transfer request (CTR). Petitioner then confronted Mr. Cafiero and received the CTR document from him. United never sent a decision regarding the CTR request.

Petitioner then filed a claim against United for breach of contract in New York State Court.

B. The State Court and Southern District of New York Proceedings

On October 21, 1999, Petitioner Peter Hoffman filed a complaint in New York State Supreme Court alleging that United Airlines breached its contract to hire Petitioner as an airline pilot. United Airlines then successfully removed the case to the United States District Court for the Southern District of New York.

Petitioner was deposed in the matter in New York on March 29, 2000. Petitioner later (July 2000) then proceeded with the case pro se. While the case was pending in the District Court, United Airlines filed for Chapter 11 bankruptcy on December 9, 2002.

C. The Bankruptcy Court Proceedings

On February 6, 2003, Petitioner filed a Proof of Claim against Respondent. On January 30, 2007, United moved to dismiss Petitioner's claim in an omnibus motion. On March 10, 2007, Petitioner opposed the motion stating that there were material facts in dispute, namely there was a dispute as to whether an agreement existed between United and the Petitioner as well as whether the Petitioner was qualified to be hired by United as a pilot. On April 2, 2007, United then filed a

reply in opposition to Petitioner's objection, stating that, among other things, that neither under breach of contract law or under promissory estoppel, Petitioner was not entitled to any legal relief. On June 28, 2007, the court dismissed the Petitioner's claim. Petitioner did not receive initial notice of this decision until the after the ten day appeal period lapsed. Petitioner filed a Motion for Reconsider the dismissal of claim on June 12, 2007. The Court (J. Wedoff) denied the Motion on July 31, 2007.

D. The District Court Proceedings

Petitioner appealed the decision to deny the motion for reconsideration to the United States District Court for the Northern District of Illinois, Eastern Division. On September 11, 2008, District Judge John Darrah issued a

Memorandum and Order denying the appeal on the basis that: (1) the Bankruptcy court did not abuse its' discretion in denying the appeal on the grounds of "excusable neglect" and (2) Petitioner did not raise this issue in the proceedings below.

E. The Seventh Circuit Proceedings

Petitioner appealed the decision of the Northern District of Illinois to the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit issued a decision on March 31, 2009, stating that Petitioner did not meet the standards of "excusable neglect" as set forth by this Court in Pioneer Investment Service Co. v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993).

A petition for rehearing was denied on April 29, 2009.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I.

Review Is Warranted Because the Lower Court's Holding Directly Conflicts with This Court's Holding in Pioneer Investment Service Co. v. Brunswick Assoc. Ltd. Partnership.

Clearly the lower courts have not considered Petitioner's argument that failure to timely file the original notice of appeal under Rule 9006 was excusable neglect. The courts failed to consider any of the factors of excusable neglect so plainly described and defined by this Court in Pioneer Investment Service Co. v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993) when deciding

that there was no excusable neglect in Petitioner's failure to timely file a notice of appeal.

In *Pioneer*, this Court considered what would be "excusable neglect" under Rule 9006, and discusses several factors that courts should consider when evaluating cases of "excusable neglect." See Id. These factors include "(1) whether granting the delay will prejudice the debtor; (2) the length of the delay and its impact on efficient court administration; (3) whether the delay was beyond the reasonable control of the person whose duty it was to perform; (4) whether the creditor acted in good faith and (5) whether clients should be penalized for their counsel's mistake or neglect." [Internal citations omitted]. See Id.

The Court further stated that "[t]he word [neglect] therefore encompasses both simple, faultless omissions to act and, more commonly, omissions caused by carelessness... [b]y empowering the courts to accept late filings 'where the failure to act was the result of excusable neglect,' Rule 9006(b)(1), Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake or carelessness, as well as by intervening circumstances beyond the party's control." See Id.

In *Pioneer*, the Court determined that the creditor's attorney's actions in missing a filing deadline was "excusable neglect" because the filing deadline was presented in such a

way as to confuse the creditors and their counsel. Id. p. 397-399.

In this case, the lower courts did not even consider the *Pioneer* factors at all when coming to the decision to deny Petitioner's motion to extend time to file an appeal late. In fact, the reasoning why the motion to reconsider was denied was not even put on the record in the District or Bankruptcy Courts. The Seventh Circuit also did not address why any of the five factors discussed in *Pioneer* did not apply to Petitioner's case. In short, the lower courts never discussed any of the five factors above nor did any court in the proceedings below state why any of these factors did or did not apply to this case.

If the lower courts did review the *Pioneer* factors, Petitioner did make a case

that his behavior was "excusable neglect." The total "delay" in this case was several days and well within the twenty days required by Bankruptcy Rule 9006, in no way prejudicing United in any way, as the bankruptcy process remains incomplete and the Bankruptcy Court continues to hear and adjudicate objections to claims. The court's administration of United's bankruptcy is not hampered by granting Petitioner leave to file a late notice of appeal.

Furthermore, United is incorrect in its assertion in the lower court that Petitioner simply failed to check the docket. Petitioner inquired about the docketing of the order, via email to Mr. Slade, and later to the court, but did not receive notice of the docketing until the tenth day after the order was docketed.

As such, this Court should grant certiorari in this matter.

II.

Review Is Warranted Because the Lower Courts Did Not Consider Whether Cause Existed to Reconsider Petitioner's Claim Under Bankruptcy Rule 9024.

The lower courts failed to adequately consider whether cause existed to reconsider Petitioner's claim in this case under Bankruptcy Rule 9024. In this case, the Bankruptcy Court, then the District Court relied on Rule 60(b)(2) when making its ruling that Petitioner did not present any new evidence. However, the court did not address whether other reasons under Rule 60 existed, mainly under Rule 60(b)(1).

If the court does not consider every element raised by Petitioner's motion to

reconsider, it is an abuse of discretion that warrants reversal under Rule 60(b). Judge Wedoff did not even consider Petitioner's arguments under Rule 60(b)(1) when denying the motion; for example, Petitioner argued that in the original motion, Petitioner argued that he was qualified under United policy, but due to mistake, inexperience or lack of sophistication with these matters and litigation, the court did not consider the argument.

The District Court stated that since Petitioner did not produce "newly discovered evidence," the appeal was not valid. Rule 60 states Petitioner must either show "excusable neglect" or "newly discovered evidence." It does not require that Petitioner meet the standard of both of these factors.

The Seventh Circuit never addressed whether Rule 9024 applies to this case. Therefore, this Court should grant certiorari in this case.

CONCLUSION

For the foregoing reasons, this court should grant certiorari in this matter.

Dated: September 22, 2009

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PETER HOFFMAN
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APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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UNITED STATES COURT OF APPEALS
For the Seventh Circuit Chicago, Illinois 60604

Submitted March 31, 2009
Decided March 31 2009

Before

FRANK H. EASTERBROOK, Chief judge

DIANE P. WOOD, Circuit judge

DIANE S. SYKES, Circuit Judge

Nos. 08-3428 & 08-3429

In the Matter of:
UNITED AIRLINES, INC., Debtor Appellee.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

Nos. 07 C 5612 & 08 C 594

Appeals of:
PETER HOFFMAN.

John W. Darrah, Judge.

ORDER

These consolidated appeals arise from Peter Hoffman's unsuccessful claim in the United Airlines bankruptcy. Hoffman worked for United in ground operations for six months during 1992, earning $7 per hour. He resigned at the end of his probationary

period. United maintains that Hoffman resigned to avoid being fired for unsatisfactory performance, but Hoffman alleged in a later lawsuit that he resigned in exchange for United's oral promise to process his application for a "competitive transfer" to a job as a pilot. United never processed that application. The breach-of-contract case proceeded as a diversity suit in the Southern District of New York until the airline filed for Chapter 11 bankruptcy in 2002. Hoffman then filed a $2.25 million proof of claim in the bankruptcy court, and United objected.

The bankruptcy court, applying Federal Rule of Civil Procedure 56, see FED. R. BANKR. P. 9014(c), 7056, disallowed Hoffman's claim. The court, ruling from the bench, explained that Hoffman needed to, but could not, establish that he would have been hired as a pilot if his application had been processed. The court reasoned that Hoffman lacked evidence that he was qualified to fly for United and noted that Hoffman admitted during his deposition that he was unqualified and that other airlines had rejected his applications for pilot positions. The bankruptcy court advised Hoffman that he could file an appeal to the district court within ten days and warned that the time would "begin running as soon as the order is docketed, so you'll want to check, if you do wish to pursue appeal, to find out when that docketing takes place." Hoffman replied that he "understood," and the bankruptcy court went on

* After examining the briefs and the record, we have concluded that oral argument is unecessary. Thus, the appeals are submitted on the briefs and the record. See FED. R.App. P. 34(a)(2).

to explain that Hoffman could also ask the court to reconsider its ruling under Federal Rules of Bankruptcy Procedure 9023 and 9024. That same day the court issued a written judgment, which the clerk of the bankruptcy court docketed on July 2, 2007. See FED. R. BANKR. P. 9021, 5003.

Hoffman did not file a notice of appeal within the allotted ten days. Instead, seventeen days later, Hoffman filed in the bankruptcy court what he titled as a motion to reconsider. See FED. R. BANKR. P. 3008 ("A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate."). Hoffman argued that he possessed additional evidence establishing that United lowers its hiring standards when screening internal candidates for competitive transfers and, thus, he would have been hired as a pilot. Because Hoffman filed his motion more than ten days after entry of the underlying decision, the bankruptcy court analyzed it under Bankruptcy Rule 9024, which incorporates Federal Rule of Civil Procedure 60(b). See *In re Wylie*, 349 B.R. 204, 209-11 (B.A.P. 9th Cir. 2006) (explaining that Rule 3008 motions are governed by Rule 60(b) if filed more than ten days after entry of judgment). In its oral ruling, the court concluded that Hoffman did not qualify for relief under Rule 60(b) because he did not proffer any evidence that was unavailable when his claim was disallowed.

Hoffman timely appealed this decision to the district court. On August 1, 2007, he also filed a notice of appeal from the order disallowing his claim and moved for an extension of time to appeal from

that decision. Hoffman recognized that the deadline for filing that appeal had expired, but he argued that his failure to meet the deadline qualified as excusable neglect. He explained that he thought United would notify him when the court's order was docketed, and so he ignored the matter until July 12, when he learned by other means that the order had been docketed. And at that point, Hoffman added, he "concluded that a motion for reconsideration was the appropriate step to take." In another oral ruling, the bankruptcy court refused to extend the appeal deadline, reasoning that Hoffman's lack of diligence was not excusable because he had been told about the process for appealing and warned to check the docket. Hoffman then filed a second appeal to the district court from this decision.

The district court consolidated the appeals and upheld both of the bankruptcy court's rulings. Hoffman now appeals to this court. Our review is de novo, meaning that we evaluate the bankruptcy court's rulings using the same standard applied by the district court. *In re Wiese*, 552 F.3d 584, 588 (7th Cir. 2009); *In re KMart Corp.*, 381 F.3d 709/ 712 (7th Cir. 2004). Both decisions must be upheld unless the bankruptcy court abused its discretion. See *In re President Casinos, Inc.*, 397 B.R. 468/ 470-72 (B.A.P. 8th Gr. 2008); *In re HML II, Inc.*, 234 B.R 67,69 (B.A.P. 6th Cir. 1999).

Hoffman does not dispute that Rule 60(b) governed his motion for reconsideration. And relief under Rule 60(b) is an extraordinary remedy. *Harrington v. City of Chi.*, 433 F.3d 542/ 546 (7th Cir. 2006). As relevant here, a judgment may be set aside based upon "newly discovered evidence

that, with reasonable diligence, could not have been discovered in time to move for a new trial." FED. R. CIV. P. 60(b)(2); see *Hicks v. Midwest Transit, Inc.*, 531 F.3d 467/ 474 (7th Cir. 2008). Hoffman's proffered evidence, purporting to show that United evaluates internal candidates using lower standards that he would have satisfied, was available to Hoffman at summary judgment and was not "new." And to the extent that Hoffman argued that the bankruptcy court in its initial ruling had misunderstood his contentions or overlooked a material issue of fact, those contentions were outside the scope of Rule 60(b). As we have repeatedly stated, Rule 60(b) is not a substitute for a timely appeal. See *Stoller v. Pure Fishing Inc.*, 528 F.3d 478, 480 (7th Cir. 2008), cert. denied, 129 S. Ct. 609 (2008); *Bell v. Eastman Kodak Co.*, 214 F.3d 798/801 (7th Cir. 2000); see also *In re G.A.D., Inc.*, 340 F.3d 331,337 (6th Cir. 2003); *Cent. Vt. Pub. Servo Corp. v. Herbert*, 341 F.3d 186/ 190 (2d Cir. 2003). Thus, the bankruptcy court did not abuse its discretion in denying Hoffman's first post-judgment motion.

Nor did the bankruptcy court abuse its discretion in refusing to extend Hoffman's time to appeal from the order disallowing his claim. Rule 8002 of the Federal Rules of Bankruptcy Procedure requires that a notice of appeal be filed within ten days after entry of the bankruptcy court's decision. Under the bankruptcy rules, "ten days" means ten calendar days, see FED. R. BANKR. P. 9006(a), and during that period Hoffman did not file a notice of appeal or take any step that would have tolled the deadline. Rule 8002 does authorize the bankruptcy judge to extend the deadline even after it expires if a

motion establishing "excusable neglect" is made within the next twenty days. FED. R. BANKR. P. 8002(c)(2); *In re Kmart Corp.*, 311 B.R. 844, 845-46 (N.D. ID. 2004). The determination of excusable neglect is "an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); see *Prizevoits v. Ind. Bell Tel. Co.*, 76 F.3d 132, 134 (7th Cir. 1996) (concluding that Supreme Court's definition of "excusable neglect" applies "throughout the federal procedural domain"); *In re Warrick*, 278 B.R. 182, 185-87 (B.A.P. 9th Cir. 2002); *In re HML II Inc.*, 234 B.R. at 71. And in this case Hoffman's neglect was not excusable.

Hoffman contends that he failed to timely appeal because he misunderstood the applicable law. He also argues that the bankruptcy court should have taken into account that the delay was brief, that he acted in good faith, and that United would not be prejudiced by allowing the appeal to proceed. See *Pioneer Inv. Servs. Co.*, 507 U.S. at 395. As the Supreme Court has stated, however, "inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute' excusable' neglect." Id. at 392. Indeed, we have noted that an "inability or refusal to read and comprehend the plain language of the federal rules" can never constitute excusable neglect. *Prizevoits*, 76 F.3d at 133 (quotation marks and citation omitted); see also *Easley v. Kirmsee*, 382 F.3d 693,697-98 (7th Cir. 2004) (holding that litigants have duty of diligence to inquire about status of case and to seek clarification of court rules); *In re Warrick*, 278 B.R. at 187 (holding that pro se debtor's failure to check docket

did not qualify as excusable neglect sufficient to justify an untimely appeal). Hoffman's purported misunderstanding, then, would have been weak support for a finding of excusable neglect. It was no support at all, however, given that the bankruptcy court cautioned Hoffman that he had just ten days to act and that the time would begin running as soon as an order was docketed.

Accordingly, both judgments are AFFIRMED.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit Chicago, Illinois 60604

April 29, 2009

Before

FRANK H. EASTERBROOK, Chief Judge

DIANE P. WOOD, Circuit Judge

DIANE S. SYKES, Circuit Judge

Nos. 08-3428 & 08-3429

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

In the Matter of:
UNITED AIRLINES, INC.,

Debtor-Appellee.

Nos. 07 C 5612 & 08 C 594

Appeals of:
PETER HOFFMAN.

John W. Darrah, Judge.

ORDER

On consideration of the petition for rehearing, all of the judges have voted to deny rehearing. It is therefore ordered that the petition for rehearing is DENIED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PETER HOFFMAN
Appellant

v.

UNITED AIRLINES
Appellee

Nos. 07 C 5612 & 08 C 594

Judge John W. Darrah

MEMORANDUM OPINION AND ORDER

Appellant Peter Hoffman appeals two judgments of the bankruptcy court in favor of Appellees UAL Corporation and United Air Lines, Inc. (collectively"United"). Hoffman asserts that the bankruptcy court erred by (1) denying Hoffman's motion for reconsideration of the order denying Hoffman's proof of claim and (2) denying Hoffman s motion for leave to file an untimely appeal.

BACKGROUND

Hoffman worked as a Stations Operations Representative" ("SOR") for United from June 15, 1992 until January 2, 1993. The SOR position was subject to a six-month probationary period. On December 18, 1992. Hoffman's supervisor, Robert Cafiero, informed Hoffman that his probationary period had been unsuccessful and asked Hoffman to

resign instead of being fired. Hoffman submitted his written resignation to United on December 18, 1992. The day of his resignation, Hoffman gave Cafiero a Competitive Transfer Request ("CTR") for a pilot position. Under United's CTR policy, an employee who had completed at least one year of service could request a transfer to another job within the company. On January 7, 1993, Cafiero passed along Hoffman's CTR to flight operations for their informal review of Hoffman's qualifications. Hoffman was not offered an interview, and no further action on Hoffman's CTR was taken. A month or two after leaving United, Hoffman called Cafiero to check on the status of his CTR. Hoffman also wrote to Cafiero, claiming that Cafiero had promised to forward the CTR and urged him to do so.

On August 6, 1999, Hoffman filed a complaint in a New York state court, claiming that United had breached a contract by failing to consider him for the position of Flight Officer in exchange for his resignation. Hoffman claimed that had United considered him for the Flight Officer position, he would have been hired. United removed the case to the U.S. District Court for the Southern District of New York. Hoffman's lawsuit was stayed and ultimately dismissed when United entered bankruptcy.

Hoffman cited his New York lawsuit for the basis of a Proof of Claim he filed in United's bankruptcy. United objected to Hoffman's Proof of Claim on January 30, 2007. On June 28, 2007, the bankruptcy court sustained United's objection and disallowed Hoffman's claim. The bankruptcy court reasoned that Hoffman could not establish that he

would have been hired as a pilot had his CTR been processed. The court considered Hoffman's admission during his deposition that he was not qualified to be a pilot and Hoffman's failure to produce any evidence that he would have been hired despite his lack of qualification.

Hoffman appeared telephonically for the June 28, 2001 hearing, at which the bankruptcy court announced its decision. After announcing that the claim would be disallowed, the court discussed with Hoffman his right to appeal as follows:

> THE COURT: Okay. Mr. Hoffman, you'll have a right to appeal that will begin running as soon as the order is docketed, so you'll want to check, if you do wish to pursue an appeal, to find out when that docketing takes place. I believe you have ten days thereafter to file a notice of appeal in the district court.
>
> MR. HOFFMAN: Understood.

The court went on to explain to Hoffman how he could move to reconsider the court's decision and how to obtain a transcript of the proceeding. Hoffman did not file a notice of appeal within the ten-day period after the order was docketed.

On July 19, 2007. Hoffman filed a motion for reconsideration of the order disallowing his Proof of Claim. The bankruptcy court denied Hoffman's motion on July 31, 2007. Hoffman filed a timely appeal of the order denying his motion for

reconsideration, which was docketed in this Court as case No. 07-5612.

On August 1, 2007, Hoffman filed a motion for leave to file an untimely appeal from the June 28, 2007 Order disallowing his claim. That motion and another motion for reconsideration of the issue were denied by the bankruptcy court, rejecting Hoffman's claims of excusable neglect in failing to file a timely appeal. Hoffman appealed the order denying him leave to file an untimely appeal. That case was docketed in this Court as case No. 08-594.

LEGAL STANDARD

The bankruptcy court's decision on a motion for reconsideration is reviewed for abuse of discretion. *Spirk v. Sullivan*, 2003 WL 22048077 at *7 (N.D. m. 2003) (Spirk) (citing *Popovits v. Circuit City Stores, Inc*, 185 F.3d 726, 730 (7th Cir. 1999)). "Such abuse exists only in situations in which no reasonable person could agree with the [lower] court." Spirk.2003 WL 22048077 at *7 (citing *Talano v. Northwestern Med Faculty Found. Inc.*, 273 F.3d 757, 762 (7th Cir.2001)). The bankruptcy court's ruling rejecting Hoffman's assertion of excusable neglect is also reviewed for abuse of discretion. See *In re KMart Corp.*, 381 F.3d 709, 712 (7th Cir. 2004).

ANALYSIS

Hoffman filed his motion for reconsideration on July 19. 2007, over ten days after the bankruptcy court disallowed his claim. Thus, Hoffman missed the ten-day deadline for a motion under Bankruptcy Rule 9023 or Rule 59 of the Federal Rules of Civil

Procedure. Hoffman's motion for reconsideration must, therefore be construed as a motion under Bankruptcy Rule 9024 or Rule 60(b) of the Federal Rules.

In his motion, Hoffman stated that he had "made many errors in his previous presentation" but now hoped that he had "both corrected these errors and omissions as well as painted a far clearer picture" of why Hoffman believed that United would have hired him as a pilot had the CTR been processed. The bankruptcy court denied Hoffman's motion, stating that Hoffman had provided no new evidence that was not available prior to judgment and merely argued that the court had made the wrong decision.

It is clear that the bankruptcy court did not abuse its discretion in denying Hoffman's motion for reconsideration. Hoffman's motion did not present any new evidence and, thus, did not satisfy Rule 60(b)(2)'s requirement of presenting newly discovered evidence not reasonably discoverable before the Rule 59(b) ten-day deadline. Hoffman argues on appeal that the bankruptcy court did not address other reasons justifying relief under Rule 60(b), such as excusable neglect. However, Hoffman has not demonstrated that he raised this or other grounds in his motion. Therefore, the bankruptcy court was correct to deny Hoffman's motion for reconsideration.

Turning to Hoffman's second appeal, Hoffman argued before the bankruptcy court that he should be permitted to file an untimely appeal of the June 28, 2007 Order disallowing his claim due to excusable neglect. Hoffman asserted that he missed the July

12, 2007 deadline for filing a notice of appeal because he was expecting the June 28, 2007 Order to be "served" on him. Hoffman's argument was rejected first by Judge Hollis and then by Judge Wedoff on Hoffman's motions for reconsideration. Both noted Judge Wedoff's explicit instructions to Hoffman on June 28, 2007 (cited above) that he would need to check the docket to see when the order was docketed. Given those explicit instructions, Hoffman's neglect in failing to file a timely notice of appeal is not excusable. The bankruptcy court, therefore, did not abuse its discretion in denying Hoffman's motion to file an untimely appeal.

CONCLUSION

For the reasons stated above the bankruptcy court's orders denying Hoffman's motion for reconsideration and motion for leave to file an untimely appeal are affirmed.

Dated: September 11, 2008

/s John W. Darrah
United States District Court Judge

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

In the Matter of	NO. 02 B 48191
UAL CORPORATION	November 6, 2007
Debtor	10:13 a.m.
	Chicago, Illinois

TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE EUGENE R. WEDOFF

APPEARANCES:

MR. MIKE SLADE on behalf of the debtor;
MR. PETER HOFFMAN (telephonically) pro se.

THE CLERK: UAL corporation, 02 B 48191.
THE COURT: Okay. Mr. Hoffman, why don't you give us your appearance again.
MR. HOFFMAN: It's Peter Hoffman. Good morning.
THE COURT: Okay.

Mr. Hoffman, I have read your motion for reconsideration as well as United's response. In order for United to be entitled to an award of sanctions against you, my belief is that United would have had to file a separate motion seeking sanctions as opposed to simply requesting that in the context of a brief in opposition to your motion. So I'm not going to award United sanctions today.

However, had they brought a separate motion and given you an opportunity pursuant to Rule 11 to withdraw this motion and you had declined to do so,

I think there may very well may have been grounds for an award of sanctions.

The fact of the matter is that the ruling that I made a long time ago I believe is correct. There was not a timely appeal. There has been no showing on your part of any excusable neglect. Judge Hollis properly ruled on that question when your original motion was brought.

And at this point the merits of your position are not the issue, although I continue to believe my ruling is correct on the merits, the merits of your position are not the issue. The issue is whether there was excusable neglect in failing to file a timely notice of appeal. And there has been no showing of excusable neglect. On that basis then, this motion will be denied.

And I do want to tell you that if you were to bring another motion of this sort, you certainly would be subject to sanctions.

MR. HOFFMAN: Your Honor, I understand. Could I just have one minute of your time to explain why I believe it's excusable neglect? Would you give me the opportunity.

THE COURT: That's the sort of thing that you needed to put in your motion. But if you want to take one minute, I will give you one minute right now.

MR. HOFFMAN: Thank you very much. I did. You -- as I'm sure you saw in the papers, I did check. The -- cases are very clear on what the tests are.

I made a mistake in not checking the docket pursuant to your instructions which was clear enough. I didn't know I needed to check the docket sooner than I did. And if I had known to do so, I would have.

If I was intentionally neglectful, if you will, I would have done it never or later. But I did it within -- well, nine days after it was docketed, although I didn't know that, so it was a total of 12 days.

I didn't know. I thought that I would get notice of entry. Okay, that's my fault. But I didn't do any of this intentionally.

I don't think this could fit more squarely under the excusable neglect definition. Nothing I did was intentional. Everything r did here was a mistake, which is precisely what the Seventh circuit and the pioneer case talks about -- excuse me, the Kmart case.

And, you know, I can't say this fast enough or well enough (inaudible). I made a good faith mistake. I don't know how much more squarely you could fit into the Pioneer case and the whole 20-day rule. I don't know if I said that correctly. But there is nothing else.

If you still disagree with my position, would you explain to me just so I can understand why you disagree that I did make a mistake and why it doesn't fit the Pioneer case, please.

THE COURT: Okay. Mr. Hoffman, the question is not whether you acted intentionally or negligently_

The whole question is whether your negligence is excusable or not.

Given that you had an express warning from me that you needed to check the docket to find out when the order was entered and that you had 10 days from the date the order was entered to file a Notice of Appeal, my finding, like Judge Hollis', would be that that is not excusable. You simply ignored the advice that you were given on the record by the Court. There is no excuse for that.

I acknowledge you didn't do it deliberately. But the question is not whether it was deliberatively done to thwart judicial proceedings, the question is whether the negligence was excusable or not. And under the circumstances, as Judge Hollis, I find it is not.

MR. HOFFMAN: But, your Honor, doesn't

THE COURT: Mr. Hoffman, you've had your minute. we've got a crowded courtroom here and this is going to terminate the proceeding for today.

MR. SLADE: Your Honor, with respect to the sanctions, I understand and I will talk to my client to see if they want to file a separate motion.

I just wanted your Honor to know that I did have many communications with Mr. Hoffman and gave him the opportunity to withdraw this motion twice, once before we appeared in front of Judge Schmetterer last week and then again in-between

the time that we appeared before Judge Schmetterer and today.

THE COURT: Okay. Mr. Slade, if you want to file a 9011 motion, it would require a separate motion. There's not a separate motion here. There's nothing for me to rule on as far as a request for sanctions. MY advice would be to let this dog lie.

If you want to incur additional expenses in pursuing the matter, you have a right to do it. But it would not be my advice to do so.

MR. SLADE: I hear that, Judge. Thank you.

MR. HOFFMAN: And, your Honor, I have no intentions of making a further motion to reconsider or something along those lines. I understand that this disposition is over and I've gotten your message as well.

I'm just very sorry that you don't believe that the intent -- you do believe that the intent is what guides here. It's not what guides -- it's not a mistake that guides. And, you know, I thank you for your time.

THE COURT: Okay.

(Which were all the proceedings had in the above-entitled cause, November 6, 2007.)

I, CAROL RABER, C.S.R., HEREBY CERTIFY THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

Honorable Judge Hollis September 11, 2007
No 02 B 48191

In re: UAL Corp.

On: Peter Hoffman's Motion for Extension of Time to Appeal (Docket No. 16823)

ORDER

Motion denied for reasons stated on the record.

/s Pamela Hollis

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

No. 02 B 48191

UAL CORP., et al.,

Debtor.

Chicago, Illinois June 28, 2007 1 0:00 a.m.

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE EUGENE R. WEDOFF

APPEARANCES:

MR. MIKE SLADE on behalf of United;

MS. ELLEN YEARWOOD on behalf of Leon Ramsey.

ALSO PRESENT:

MR. PETER HOFFMAN (TELEPHONICALLY).

THE CLERK: UAL Corporation, 02 B 48191.

THE COURT: Okay. Let's take up Mr. Hoffman's matter first.

Would you state your appearance, Mr. Hoffman.

MR. HOFFMAN: Peter Hoffman, Your Honor.

THE COURT: Okay.

MR. SLADE: Your Honor, Mike Slade for United.

THE COURT: Okay. I have a ruling to read into the record. This matter is before the court, claim number 345 of Peter Hoffman, on United's objection. Mr. Hoffman's claim is based on damages arising from an alleged failure by United to process his Competitive Transfer Review, or CTR, to become a pilot in violation of an alleged oral contract. Hoffman alleges that, had the CTR been processed, United would have hired him as a pilot. Hoffman brought this claim in New York state court in 1999 and United removed it to federal district court. The parties completed discovery, as reflected in the case's docket report and two orders of the magistrate judge presiding over the case. United moved for summary judgment. However, before judgment could be rendered, United filed for bankruptcy and Hoffman filed his claim as a creditor of the estate. United objects to the claim on two grounds. First, United argues that New York's statute of limitations bars this claim. Second, United argues that Hoffman's claim fails on its merits.

At an earlier hearing, this court rejected United's statute of limitations argument and instructed the parties to address the merits. United filed a motion for reconsideration of its statute of limitations defense and both parties submitted arguments regarding the merits. Both motions are now ready for ruling.

United's motion for reconsideration will be denied. As discussed on the record on May 17, 2007, United had a reasonable amount of time to complete the alleged oral contract, and the statute of limitations did not begin running until after that reasonable time period ended. Again, as previously discussed, the length of that reasonable period is a question of fact under New York law.

On the merits, however, United's objection will be sustained and the claim will be disallowed. By objecting to the claim under Section 502(b) of the Bankruptcy Code, Title 11 U.S.C., United instituted a contested matter is adjudicated in accordance with Rule 9014 of the Federal Rules of Bankruptcy Procedure. Rule 9014(c) applies to contested matters the provisions of Bankruptcy Rule 7056, which, in turn, incorporates Rule 56 of the Federal Rules of Civil Procedure. Summary judgment is thus available in the claims adjudication process.

Accordingly, the legal standard to be applied is whether there is any genuine issue as to any material fact such that this matter should be set for trial.

In order to prevail, Hoffman must establish that he would have been hired as a pilot had the CTR been processed. This is a material fact. See *Fishman v. Teter*, 133 F.2d 222, 7th Cir. 1943, defining a material fact as one that a party must establish in order to prevail.

A genuine issue as to this material fact would exist if there were sufficient evidence favoring Hoffman for a jury to return a verdict in his favor.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 1986. Because Hoffman has offered no evidence to support this fact, summary judgment is appropriate Save *Our Cemeteries, Inc. v. Archdiocese of New Orleans, Inc.*, 548 F.2d 1074, 1077, 5th Cir.1978.

To support its contention that Hoffman would not have been hired as a pilot, even had the CTR been processed, United offered Hoffman's own admission that he was not qualified to be a pilot and that his application for that position had been rejected by other major airlines.

In response, Hoffman claims that he would have been hired through the CTR process in spite of his lack of qualification, but Hoffman offers no evidence at all to support this assertion. The only evidence before the court is that Hoffman is not qualified to be a pilot, and the only reasonable conclusion is that he would not have been hired as a pilot even had the CTR been processed.

Furthermore, summary judgment cannot be denied on the basis that more discovery would be appropriate. Hoffman was given a full opportunity to pursue discovery in the previous litigation, making additional discovery here inappropriate. If he was unable to discover any evidence to put this crucial fact at issue during the time when discovery was open in the New York proceeding, it is very unlikely he would be able to do so now, 15 years after the events in question. United's objection to this claim will therefore be sustained and the claim disallowed in its entirety.

MR. SLADE: Thank you, Judge. Do you need a separate order from us or are you just going to -- okay. We'll get that to Ms. William.

THE COURT: Okay. Mr. Hoffman, you'll have a right to appeal that will begin running as soon as the order is docketed, so you'll want to check, if you do wish to pursue appeal, to find out when that docketing takes place. I believe you have ten days thereafter to file a notice of appeal in the district court.

MR. HOFFMAN: Understood. Your Honor, can I ask a question or two?

THE COURT: At this point I don't think that would be necessary, but go ahead.

MR. HOFFMAN: Would you permit me to make a motion to reargue because the court may have missed something in its ruling on --

THE COURT: You have rights, Mr. Hoffman, to seek my review under Bankruptcy Rule 9023 or 9024. You might want to check those out.

MR. HOFFMAN: Okay. And I think, Your Honor, you might have missed somethinmg in my papers that --

THE COURT: Well, that's what 9023 and 9024 are designed to address.

MR. HOFFMAN: It seems, Your Honor, that you read this from notes or something. Is it possible for me to get a copy of what you read?

THE COURT: Yes. You can talk with the court reporter to get a transcript.

MR. HOFFMAN: Would I be able -- that's a little bit cumbersome. Would it be possible to just ask your courtroom deputy to provide me a copy of what you read.

THE COURT: No, that's not possible. You need to contact the court reporter. The deputy doesn't have access to the transcript.

MR. HOFFMAN: And what you've read is not available to --

THE COURT: It is available through the court reporter.

MR. HOFFMAN: Okay.

THE COURT: Okay.

MR. HOFFMAN: All right. Very well.

THE COURT: Okay.

MR. HOFFMAN: Thank you very much.

THE COURT: Now, there are other matters on the call today.